Supreme Court, U.S.
FILED
AUG 16 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-93

IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

P. E. BAZEMORE, *et al.*,
Petitioners

v.

WILLIAM C. FRIDAY, *et al.*,
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Should this Court grant *certiorari* to review the fourth circuit's decision that there was no pattern or practice of intentional discrimination in the salary claims of Petitioners when

   a) The salary claims were correctly decided and no pattern or practice of intentional discrimination was found by the district court, and

   b) The statistical regression and data presented was properly rejected by the district court and fourth circuit as being inaccurate and based on inappropriate data?

2. Should this Court grant *certiorari* to review the fourth circuit's decision that there was no pattern or practice of intentional or individual discrimination in connection with the selection of county extension chairmen when

   a) The district court correctly applied the disparate treatment analysis requiring proof of intentional discrimination in connection with its decision on the claims of discrimination in selection of county extension chairmen, and

   b) The selection process for county extension chairmen was not in violation of *Arizona Governing Committee v. Norris*, 73 L.Ed. 2d 1236 (1983).

3. Should this Court grant *certiorari* to review the fourth circuit's decision that there was no violation of Title VI in connection with the North Carolina Agricultural Extension Service's administration of the 4-H and Extension Homemaker Programs when there was no evidence presented that any black recipient or participant was discriminated against in connection with the 4-H or Extension Homemaker programs?

4. Should this Court grant *certiorari* to review the fourth circuit's decision that the district court properly denied certification of this as a class action pursuant to Rule 23, Federal Rules of Civil Procedure when the facts showed that certification was inappropriate here and the case was tried as a pattern or practice disparate treatment case?

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RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

This action was instituted in the U.S. District Court for the Eastern District of North Carolina on November 18, 1971, by more than fifty employees of the North Carolina Agricultural Extension Service (NCAES) alleging racial discrimination in employment and the provision of services by NCAES on behalf of 5 purported classes of blacks and indians. The United States intervened in the action on April 7, 1972, under Section 902 of Title IX and Sections 601 and 602 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000h-2, 2000d and 2000d-1.

The United States was permitted to amend its complaint in intervention by Order of the Court on October 9, 1979, to include allegations of a pattern and practice of racial discrimination in alleged violation of Sections 703 and 706 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* Class action certification was denied by the Court on October 9, 1979, after discovery closed.

On November 23, 1981, plaintiffs amended their complaint to allege violations of Title VII. The defendants denied all allegations of discrimination. The nonbifurcated trial of this action began on December 7, 1981, and ended on February 12, 1982. Counsel for the United States and plaintiffs, acknowledged this was a disparate treatment case and that they had the burden of proving a policy, pattern and practice of intentional discrimination. (Tr. 10, 13, 16). The plaintiffs and the United States called over 46 witnesses to testify and introduced a multitude of exhibits in support of their pattern and practice and individual claims.

The defendants' case began on December 31, 1981 and the defendants called over 15 witnesses and introduced over 250 exhibits in support of their contention that no pattern or practice of discrimination existed and that the individual plaintiffs were not entitled to relief.

Both the United States and the private plaintiffs called rebuttal witnesses. (Tr. 6411-6616). The transcript consisted of 32 volumes and 6818 pages. Although there was some overlap of exhibits, the defendants introduced 274 exhibits, the plaintiffs 262 and the United States 274.

On August 20, 1982 and September 17, 1982, the Court entered Judgments and Orders dismissing all claims of both the United States and the individual plaintiffs.

In its decision of August 20, 1982, with respect to the pattern and practice claims, the Court found as follows:

(a) That this was not a proper action to be certified as a class action pursuant to Rule 23, Federal Rules of Civil Procedure. (49a) This Finding was appealed.

(b) That blacks are not discriminated against in geographical employment assignments in NCAES. (53a) This Finding was not appealed.

(c) That NCAES does not discriminate in recruitment of black professional employees (55a) This Finding was not appealed.

(d) That NCAES does not discriminate in hiring black professionals at the county and state levels and NCAES's selection procedures are non-discriminatory. (62a) This Findings was not appealed.

(e) That NCAES does not discriminate in assignments of professional personnel to areas of responsibility (i.e. crops, livestock). (64a). This Finding was appealed.

(f) That NCAES does not discriminate in title promotions of county level professional employees (from assistant to associate to full agent) and the performance evaluation system used in connection with promotions of county level professionals was valid, and non-discriminatory. (74a) This Finding was not appealed.

(g) That NCAES does not discriminate in the selection of county extension chairmen. (101a) This Finding was appealed.

(h) That NCAES does not discriminate in the selection of state level positions such as director, program leaders, specialists, and district chairmen. (106a) This Finding was not appealed.

(i) That NCAES does not discriminate with respect to terms, conditions and privileges of employment. (72a) This Finding was not appealed.

(j) That NCAES does not discriminate in connection with salaries. (150a) This Finding was not appealed.

(k) That NCAES does not discriminate in work assignments. (152a). This Finding was not appealed.

(l) That NCAES has established valid, nondiscriminatory qualifications, tests, selection standards and procedures in hiring and promotion. (158a) This Finding was not appealed.

(m) That NCAES has taken appropriate action to correct the present effects of past racially discriminatory policies and practices. (163a). This Finding was not appealed.

(n) That NCAES provides equal services to minorities (164a). This Finding was not appealed.

(o) That NCAES' services to farmers and other persons are provided on non-racially segregated basis. (164a). This Finding was not appealed.

(p) That NCAES is not in violation of Title VI in the delivery of services to 4-H and Extension Homemaker Clubs. (185a). This Finding was appealed by Petitioners but not by the United States.

(q) That the case was a disparate treatment case, and NCAES did not engage in a pattern or practice of racial discrimination. (205a)

In its decision of September 17, 1982, the Court analyzed the individual claims of 42 plaintiffs and determined that none were entitled to relief.

The United States and Petitioners appealed to the fourth circuit. The United States appealed from only *3* of the 16 adverse rulings on their claims of alleged pattern or practice of discrimination. The private plaintiffs

appealed from only 4 of the foregoing adverse rulings; salaries, county extension chairmen, 4-H and Home Economics and class action denial.

Decision was rendered by the court of appeals on December 10, 1984 affirming the district court's two judgments in all respects. Judge Phillips dissented on three claims, to wit: the 4-H Club claims; class action and salaries. He affirmed in all other respects. Petitions for Rehearing and rehearing *en banc* were denied by an evenly divided court on April 15, 1985.

SUMMARY OF ARGUMENT

A. The court of appeals correctly decided the salary claims of petitioners in this disparate treatment case. The district court properly analyzed all petitioners claims, including salary, by the allocation of proof set for pattern or practice and individual claims of racial discrimination through disparate treatment, which claims require proof of intentional discrimination, be they Title VII or 42 U.S.C. § 1981. The district court and court of appeals correctly followed *McDonnell-Douglas v. Green*, 411 U.S. 792 (1973); *Teamsters v. United States*, 431 U.S. 234 (1977); *Hazelwood School District v. United States*, 433 U.S. 299 (1977) and *United Airlines v. Evans*, 431 U.S. 533 (1977) in requiring petitioners to prove their assertions of intentional discrimination. In each instance, petitioners failed to do so. The existence of intentional discrimination is for the trial court to decide. *Pullman Standard v. Swint*, 456 U.S. 273 (1982). The district court's two decisions clearly show this was carefully decided on the facts and the facts showed no discriminatory intent.

Petitioners petition this Court with sweeping assertions bearing faint resemblance to the facts. Petitioners have nothing new or important to bring before this Court in connection with any issues, including the salary claims. Petitioners tried this disparate treatment pattern or practice and individual claim case without regard to the particular facts surrounding NCAES, its

special requirements for hiring, staffing and without regard to the real non-discriminatory factors which clearly affect salary differences between all agents irrespective of race. Extension service employees in each of the 100 counties of North Carolina have factors affecting salary that are different from county to county and have nothing to do with race. Petitioners come here asserting the same old arguments which have failed them in the past. There are no "wage scales" involved and petitioners failed to prove intentional discrimination in both pattern or practice and individual salary claims.

NCAES employees are professionals with college degrees required. Each of 100 counties has needs for different training and educational skills for NCAES agents and each county contributes different percentages of each agent's salary and percentages vary annually. NCAES pays the remaining percentage of an agent's salary. Salaries are not now, nor have they ever been, the same except for the minimum starting salary. From initial employment on, salaries of agents vary from county to county depending on performance, percentage of state versus county contribution and many other factors, none of which are racial. App. Exhibit A shows how much salaries vary between agents, with similar salary ranges, in just two years. Race has nothing to do with it. Petitioners submitted inaccurate comparisons and statistics which failed to utilize the proper factors affecting all agents salaries. NCAES refuted and rebutted such evidence and showed it to be inaccurate and lacking in probative weight, which is permissible under standards set by this Court in *Dothard v. Rawlinson*, 433 U.S. 331 (1977) and *Teamsters, supra.* The district court and court of appeals properly rejected such evidence and improper statistics.

B. The district court and the court of appeals correctly rejected claims that the selection of county extension chairmen was discriminatory. Petitioners, utilizing inappropriate comparisons with respect to the selection process of the county extension chairman, the highest

county level position in NCAES, failed to prove their case. The district court, applying allocation of proof set out in *Teamsters* and *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981), analyzed the statistical cases and individual claims against the evidence. Petitioners failed to prove a discriminatory pattern or practice and each individual claim was free from intentional discrimination. Petitioners now assert the decision extends *General Building Contractors v. Pennsylvania*, 458 U.S. 375 (1980) and violates *Arizona Governing Board v. Norris*, 73 L.Ed. 2d 1236 (1983). Once again, Petitioners avoid the facts in making their assertions here.

NCAES and each of North Carolina's 100 counties sign an agreement in which both entities become co-employees and both pay a percentage of each county employee's salary. (23a). NCAES recommends prospective employees to the County Commissioners. The decision must be one of joint acceptance. No responsibility is delegated to a third party. (77a). *Norris* is not applicable to this case. Petitioners next misdirected claim is that the circuit court extended *General Building Contractors, supra*, requiring proof of intentional discrimination in section 1981 claims, to Title VII claims. A Title VII disparate treatment case requires proof of intentional discrimination to succeed. *Teamsters, supra.*

C. The district court and the fourth circuit correctly denied Petitioners claims that the NCAES 4-H and Homemaker Extension Club programs were operated in violation of Title VI and on a racially discriminatory basis. Out of over 30,000 voluntary black participants in the 4-H programs in 1980 in North Carolina, not one black person came forward to testify that he or she had ever been subjected to racial discrimination. The same was true for the thousands of black females who were members of Homemaker clubs supported by NCAES. Petitioners attack the decisions by trying to assert that segregation has never been cured. The facts show no "freedom of choice" plan exists here. Both programs are

voluntary and not mandatory public school attendance situations. NCAES affirmatively took action which eradicated pre-1965 segregation in 4-H and Extension Homemaker programs and the proof of the pudding is that out of the thousands of participants in those two programs none came forward to complain or assert any racial discrimination. The United States, understandably, did not appeal these claims.

D. The district court and the fourth circuit properly denied class certification in this case. Petitioners assert *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974) was violated by both courts. *Eisen, supra*, dealt with two issues. The first was whether a class action determination was appealable under 28 U.S.C. § 1291 and the second was whether a district court, upon a preliminary hearing on the merits, can require defendants to pay a part of the class notification costs. Neither issue is present in this case and the district court's denial of class certification came before trial on the merits and again, after a ten week trial. The record clearly shows that class action was improper under Rule 23, Federal Rules of Civil Procedure and the district court's decision explains why. The case was tried as a pattern or practice case in which the relief, had Petitioners won, would have been the same as if they had a proper class action, which they did not. Petitioners have pointed to no prejudice to their case by trying them as pattern or practice claims. The same relief is available either way. *General Telephone Company v. EEOC*, 446 U.S. 318 (1980). Even the elements of proving a prima facie case are the same in a pattern or practice case. *Cooper v. Federal Reserve Bank of Richmond*, 81 L.Ed.2d 718 (1984). The facts show that a class action is not appropriate here.

NCAES met the claims of petitioners and the United States head on in the trial of this case, responded to each claim, and showed an organization free from racial discrimination. Certiorari should be denied.

ARGUMENT

I. THE SALARY CLAIMS WERE CORRECTLY DECIDED AND CERTIORARI SHOULD NOT BE GRANTED TO REVIEW THEM.

Petitioners' devote over 53% of the Petition alleging errors by the district court and fourth circuit in connection with denial of their salary claims. Petitioners claim that the decisions (1) allow the use of "racially motivated wage scales" and (2) disregarded the statistical regressions and data submitted by Petitioners in support of their claims of intentional wage discrimination. Petitioners have made blatant assertions as to what the district court and fourth circuit held without providing the Court with the facts surrounding NCAES, its organization, structure, salary process and promotion practices. Knowledge of the NCAES, its organization, structure and salarly process is essential to an analysis here. The district court's opinion is respectfully referred to for a detailed summary of NCAES, its function, salary process, programs, and employment processes. (6a-207a)

It is essential to understand from the outset that NCAES is not a factory assembly line endeavor, nor a corporation whose work force engages in similar tasks in similar work environments at plants and offices located within each of North Carolina's 100 Counties. Petitioners refer to the NCAES salary process as "wage scales" as if this case were a plant setting. Such is not the case.

The district court and the panel majority recognized that no "wage scale" situation exists and no meaningful conclusions as to salaries can be drawn by petitioners' comparing agents' salaries by title, race and tenure across county lines. Both courts correctly understood that such a comparison led to no valid conclusions at all under the facts of this case. North Carolina is divided geographically into 100 counties. Each county is a separate governmental agency with its own elected Board of Commissioners. NCAES and each county enter into a "Memorandum of Understanding" which is a separate

written agreement and which, *inter alia*, governs the hiring of NCAES professional employees within the county and the amount of financial support that particular county will contribute towards the NCAES professional employees' salaries on a percentage basis. NCAES county level professional employees, i.e., agents, receive two checks each month. One is from the NCAES, funded by state and federal funds, and the other from the County. NCAES agents cannot be hired to fill a county agent position without County approval. The salary claims of petitioners focus on county level employees of NCAES. (20a-24a).

The specific needs of each of North Carolina's 100 counties determine the educational background and skills needed in the agents it employs. The minimum educational requirement is a bachelor's degree and skills within subject matter areas such as are needed by a particular county's extension program, to wit: Agriculture, 4-H, Home Economics or CRD. For instance, if a particular county has a large dairy farm population, its agricultural program needs would require an agent with a dairy or animal husbandry educational background or training skills. Thus each county has special needs. (58a-60a)

Why is this so? The answer is simple. North Carolina counties vary greatly in population, rural/urban population, size, racial makeup, topography, agrarian needs and resources. The climate and adaptability of the land for crops, trees, poultry and livestock vary tremendously between counties located within the coastal plain, piedmont and mountain regions of the State. Black agents prior to the 1965 merger only functioned in 51 out of 100 counties and there are counties which have never had black extension agents due to the fact that few blacks reside there and blacks did not apply for extension positions there. (28a-29a, 48a, 192a-193a) No discrimination was found in NCAES assignment, recruitment or promotion of black NCAES employees.

Thus, the qualifications (educational background and skills) of the individual agents required to serve the needs of each county must differ and are in fact different as the record here reveals. (58a-59a) It is undisputed in this case that because of the wide variance among North Carolina's counties, the requirements for extension staff vary greatly from county to county and the needs of a particular county dictate the areas of subject matter responsibility, i.e., livestock, soybeans, etc., extension agents must possess within the particular county. Once an agent is hired to fill a county level professional position, he or she cannot be required to move or transfer by NCAES from one county to the other nor fill a position opening for which that agent is not qualified by education, training or interest to fill. (59a-61a) Each position carries its own special needs depending on the needs of the particular county. Where special qualifications are required to fill particular jobs, comparisons to groups who do not possess such special qualifications are of little probative value. *Hazelwood School District v. United States, supra*, 307-308. Just as the varying needs of each county governs its NCAES professional staff, the variance between each 100 counties in size, population, agriculture and wealth, governs each county's particular ability to financially support its Extension program within the county, including contributions to county agents' salaries. This has always been the case.

Because of this fact, some counties have an ability to pay more of an agent's salary than others out of their own funds and to pay their agents higher salaries. The remainder of each agent's salary comes from state and federal funds. The federal government allocates a sum of money to NCAES each fiscal year. Federal funds are combined with funds from the North Carolina general Assembly for NCAES to support salaries for county extension employees. The NCAES in consultation with the Board of County Commissioners determines what the state share of the agent's salary will be from the federal and state funds and what the county will pay that agent as

its contribution. (20a) The percentage of salary paid by the county and NCAES varies greatly from county to county. These percentages change each year depending on the county's individual ability to pay and interest in the NCAES program within the county. In 1981 the percentage of salaries of local extension staffs that were paid by county funds ranged from a high of 57% in Forsyth County to a low of 18% in Camden County. (110a-113a).

Each county's extension staff is not staffed at the level of others. Each county staff is headed by the County Extension Chairman ("CEC") who is the highest paid NCAES county staff member in the county. The salary received by CEC's varied greatly between counties depending on the county's support. (DX 67-1-67-100) The minimum county staff is 2 and several counties have staffs exceeding ten agents in number. The agent determines whether or not to apply for each vacancy and applicants who do not have the skills and educational background required for the county vacancy are not considered. The district court found that the recruitment and hiring practices of the NCAES were valid and non-discriminatory. (58a-62a)

NCAES sets a minimum entry salary level for all new employees at the Assistant Agent Level with a bachelor's degree and no prior experience. A salary differential is offered to those holding master's degrees. On occasions, due to "market demand" an agent has been employed above the entry level in order to obtain the skills in short supply. There have also been times when prior and relevant experience justified a salary above minimum entry level. (109a) Since 1965, NCAES has set the minimum starting salary for all new county agents uniformly. (383a)

After initial employment, the agent or a County Chairman's salary may be affected at any given time by a great number of factors such as tenure, additional degress, subject matter area of specialty, area of responsi-

bility, job performance and promotion from assistant agent to associate agent to full agent, ability of county to pay, state and county across the board raises, state and county merit increases, market competition for holders of certain educational degrees, and competition between counties for a certain agent's skills. (109a-116a, 133a-136a, 383a-385a) Contrary to petitioner's assertions, these variable factors are real, not imaginary and are supported by the record. (362a)

The position of County Extension Chairman was established in 1962 prior to the enactment of Title VI. (82a-83a) The County Extension Chairman is the top administrative position in each county. (74a, 82a) Petitioners tried to lump CEC salaries in their statistical salary comparisons of other agent's salaries. (136a-138a)

The panel majority noted the difference of the County Extension Chairman in salary and stated:

> "The district court correctly declined to compare or include the salaries of County Chairmen with those of agents. There is about a $4,000.00 average salary difference between chairmen and agent to begin with. The chairman is the head of the county based employees of the Extension Service. He is not routinely promoted from agent; the method of his selection is entirely different, and counting the salaries of the County Chairman together with those of the agents for purposes of analysis could only distort the result. (382a-383a)

The salary paid the chairman sets the *maximum extension salary* pay of any agent for that county. (DX 67-1-67-100, A. 632-633, 2210) Regardless of the starting salary, level, skill, performance or tenure, an agent's maximum will be *capped* by the salary paid to the chairman. There was one exception found in 1981, in Alamance County, where the salary of Ozetta Guye, a black HEA, exceeded that of the Chairman. (DX 67-86) As between County chairmen the salary ranges have always varied thereby directly impacting on the maximum amount of the agents' salaries within the counties. This accounts

for differences among county agents' salaries and has nothing to do with race. Petitioners attempt to direct attention from this. The reason why can be plainly seen from the following facts.

In 1971, chairmen's salaries ranged from lows of $11,601 (Dare) and $11,621 (Avery) to highs of $16,588 (Wake) and $16,646 (Rockingham). In 1976 the range was from low of $16,028 (Dare) to high of $23,931 (Wayne). In 1981, CEC salaries ranged from lows of $20,000 (Stokes, Clay) to highs of $34,577 (Sampson) and $34,588 (Lenoir). (DX-196) As no one under the chairman receives a higher salary on the county level, this is proof positive that salaries vary from county to county because of this factor. It further proves that there are no uniform "wage scales".

App. Exhibit A is a comparison of agents randomly picked within similar salary ranges for 1979 showing state and county contributions and comparing those same persons' salaries the following year. This exhibit clearly shows the variances caused by county/state contributions in a one year period. Race has nothing to do with it.

The salary process is non-discriminatory

The salary process of NCAES conducted annually involves pay raises of only three kinds. The panel majority grasped this fact and stated:

> "At the outset of this part of the discussion, certain matters admitted or found by the district court and not appealed are important to remember. There is no discrimination in hiring. There has been no discrimination in promotion from assistant to associate to full agent. Pay raises of three kinds from whatever source, percentage raises, across the board raises, and merit raises. There is no discrimination in across the board and percentage raises. Everyone gets them . . . ." Id. p. 25, 26) The merit salary process was determined to be nondiscriminatory. (383a)

Another factor which explains differences in salaries is that the percentage of total salary paid by each county

varies from county to county. Percentages ranged from 18% to 57% in 1981. This factor alone causes differences from entry level on with respect to across the board and percentage raises, from state/federal and county funds, regardless of source and from year to year. Race has nothing to do with percentage contributions. (383a)

For example. Two agents both started at $15,000.00 entry level in 1981, and both agents were employed as agricultural agents with agronomy backgrounds. Each was employed to fill a vacancy in a different county. In 1982, the State of North Carolina provided a 5% cost of living increase. The effect would be as follows:

1. Agent A was employed by a county paying 30% of his salary. Thus Agent A's salary was 70% state/federal funds and thus 70% was subject to the 5% cost of living increase. Agent A would receive 5% of 10,500 (70% of 15,000) as an across the board raise. Thus if A received no other raise, A's raise would be $525.00 (5% of 10,500).

2. Agent B was employed by a county paying 57% of his salary. Thus Agent B's salary was 43% state/federal funds and thus 43% was subject to the 5% cost of living increase. Agent B would receive 5% of $6,450 (43% of 15,000) as an across the board raise. Thus if B received no other raise, B's raise would be $322.50 (5% of 6,456), a difference in across the board raise in annual salary for 1982. No other raises considered, A would receive in excess of over $200.00 per year simply as a result of the county percentage factor.

The record shows that every year some counties grant across the board increases in salary and some do not. NCAES does not utilize the funds allocated by the state/federal increases and take state salary money from those counties who support the program to fund county portions of raises in those counties who do not support the program with across the board raises. This factor causes a variance each year. (110a-111a, 135a, 383a) All one has to do is apply a county percentage across the board raise to A and B of different percentages and the margin

in salary could be reduced or widened considerably. Such a factor is not created by imagination or ingenuity of counsel.

Tenure, educational level (i.e., masters or doctorate), size of program and area of skill are factors in an agent's salary, including having a skill which is particularly needed. (109a) Also inflation is a factor which cannot be overlooked in salary analysis. The cost of entrance level hiring has gone up and salaries have to be adjusted upward to keep abreast of starting salaries for assistant, associate and full agent, none of which have anything to do with race and are uniformly set. (115a)

Petitioners criticize these factors as being products of imagination or argument of counsel. These factors are real and non-discriminatory.

Since the merit salary process involves the one area of NCAES pay increases (excluding county merit which is within the county control) which is not across the Board, the process will be addressed briefly in this Response. A discussion of the merit process is contained in the district court's opinion. (113a-116a).

The linchpin of merit salary process is the NCAES Performance Review Guide and Personnel evaluation system conducted annually. The district court found that the NCAES Performance Review Guide was valid and non-discriminatory and that the personnel performance evaluation system within NCAES was valid and non-discriminatory. (154a-158a) The NCAES utilizes the Performance Review Guide and performance evaluation system in determining merit pay increases. Petitioners did not challange the district court's determination that the performance evaluation system was valid and nondiscriminatory. Merit increases are based upon job performance measured by the valid non-discriminatory job performance evaluation system. The amount of merit pay is determined by "quartiling." A discussion of quartiling is contained in the district court's opinion. (112a-114a)

Quartiling is a reflection of an agent's job performance which has been evaluated in a non-discriminatory manner. Both the district court and the panel majority so found from the evidence in this case. (150a, 400a)

In the face of the foregoing, Petitioners seek certiorari on two grounds relating to the salary claims. The first ground is that the decision is in conflict with decisions of this Court and other circuits because NCAES maintained and continued intentionally discriminatory "wage scales." The second is that the district court and panel majority rejected the Petitioners and United States' statisical regression analysis and data in denying salary claims in conflict with decisions of this Court and other circuits. Petitioners assertions are incorrect.

The Intentionally Discriminatory "wage scale" argument is specious

Petitioners argue that the decision holds that Title VII permits an employer to continue to pay blacks less than whites pursuant to intentionally discriminatory "wage scales" established prior to 1965 and that alleged resulting disparities constitute continuing violations of Title VII in conflict with other decisions of the fourth circuit. The opinion does not hold that at all and there is no evidence that NCAES ever established "intentionally discriminatory wage scales" prior to 1965 or at any other time.

This is a disparate treatment case. The district court determined the case to be one of disparate treatment under *McDonnell-Douglas v. Green*, 411 U.S. 792 (1973) requiring proof of intentional discrimination in Title VII claims of disparate treatment. In a disparate treatment case proof of discriminatory motive is critical. *Teamsters v. United States, supra*, 335.

The allocation and burden of proof in a Title VII disparate treatment pattern or practice case is governed by *Teamsters, supra.* It is important to note the district court's discussion of the pattern or practice claim:

> "A careful weighing and assessing of the plaintiffs' statistical and non-statistical evidence led the court to conclude that the plaintiffs had probably made out a prima facie case with respect to defendants' promotion and salary practices, and the analysis proceeded on this assumption. While not conceding that plaintiffs had made a prima facie case, the defendant Extension Service assumed the burden of articulating plausible reasons for its actions, and its evidence, which the court found convincing, has been set forth herein. When the plaintiffs failed to produce evidence to establish that defendant's reasons were pretextual plaintiff's case failed. *EEOC v. Korn Industries, Inc.*, 682 F.2d 256, 262 (4th Cir. 1981). (190a-191a)

It is clear Title VII disparate treatment and 42 U.S.C. 1981 claims both require proof of intentional discrimination. *General Building Contractors v. Pennsylvania, supra.* The district court found there was no intentional discrimination and that the reasons offered by NCAES were valid and plausible and not rebutted. (104a) The existence of intentional discrimination is for the trial court to decide. *Pullman v. Swint, supra.* The district court made no finding that NCAES established or maintained intentionally discriminatory wage scales.

Title VII became applicable to public employers in 1972. *Hazlewood School District v. United States, supra,* decided after *United Airlines v. Evans,* clearly held that a public employer (NCAES) who from that date forward (March, 1972) made all its employment decisions in a wholly non-discriminatory way did not violate Title VII even if it had maintained an all-white work force by purposefully excluding Negroes. Petitioners argument is fraught with misleading statements. Assertions that the majority opinion holds that "North Carolina is free to pay blacks hired prior to 1965 less than whites for the rest of their lives" and to pay blacks based on "racially motivated pay schedues established in the past" are evidence of such distortions. The district court stated:

> "The court has been impressed by the absence in this case of so many of the usual badges of discrimination. For instance there was no evidence—that there is any difference in the entry level salaries of blacks and whites." (199a-200a)

Applying the *Teamsters* and *Burdine* standards of proof, the district court analyzed individual plaintiffs' salary and promotion claims and considered them in determining the pattern or practice case. *Hazelwood* marked the point in time in which analysis of employment decisions by a public employer for purposes of violations of Title VII would start. An analysis by both the district court and the panel majority, as set forth in their opinions, clearly showed NCAE's employment decisions, including administration of salary, to be made in a wholly non-discriminatory way. The lack of proof of intentional wage discrimination coupled with the non-discriminatory salary process supports the decision that NCAES did not violate and was not violating Title VII in 1972 or to the present. Couple this with the findings, not appealed, that there was no discrimination in hiring, promotion, assignments, education opportunities, training or services and it is clear that the plaintiffs' distortion of the facts to attempt to lead the Court to believe that the NCAES salary process involved standardized "wage scales" at any time is specious. *Hazelwood* and *Evans* were properly followed here.

Plaintiff's attack on district court and panel majority's statistical regression analysis rejection is invalid

Petitioners' attack the rejection of their statistical regression in the salary dispute. They claim that the district court "theorized" that there were nine possible explanations other than simply those factors of race, education and job tenure utilized as the basis for their statistical regression. The panel majority agreed that the plaintiffs' statistical proof was "unacceptable". (391a) Petitioners assert the ruling is in conflict with opinions of this Court. NCAES respectfully refers the Court to the factual discussion on salary claims contained in this

Response for a discussion of the "factors" which plaintiffs claim are "theoretical". Petitioners do not take issue with the fact that there was only one area of salary in which the NCAES had any discretion, to wit: Merit pay increases and that across the board, state/county percentages, county merit pay, promotion based pay and so forth were uniformly applied.

Disregarding the facts, Petitioners assert their own interpretation of what data is important. The district court and the panel majority reviewed the entire NCAES salary structure and based upon the evidence, concluded that there were factors of importance not included in plaintiff's statistical evidence which skewed and flawed its effect.

Petitioners erroneously contend that in order to rebut such flawed analysis the defendant *must* offer its own statistics in return. This argument flies directly in the face of the decisions of this Court as discussed in *EEOC v. Federal Reserve Bank of Richmond*, 698 F.2d 633 (4th Cir. 1983); reversed on other grounds; *Cooper v. Federal Reserve Bank of Richmond, supra.*

In *EEOC v. Federal Reserve Bank of Richmond, supra*, Judge Russell wrote that:

> "Of course, statistical evidence, like any other evidence, is always subject to rebuttal and this rebuttal may assume a number of forms. In *Dothard v. Rawlinson*, Justice Rehnquist, concurring, said that the defendants in a discrimination case may endeavor (in rebuttal) to impeach the reliability of the statistical evidence, they may offer rebutting evidence, or they may disparage in arguments or in their briefs the probative weight which the plaintiffs' evidence must be accorded. 433 U.S. 338-39 And in *Teamsters*, the Supreme Court declared that statistical evidence may be rebutted by "demonstrating that the plaintiff's proof is either inaccurate or insignificant.' 431 U.S. at 360.

Neither *Dothard v. Rawlinson, supra*, 331; nor *Teamsters v. United States, supra*, require the employer to

defeat plaintiff's proof by statistics alone, but by demonstrating that proof is inaccurate or insignficant. The method is not by statistics alone as petitioners would have the Court believe. The regression which formed the linchpin of the plaintiffs' and United States' joint case omitted proven factors which impact on salary, such as across the board increases, county/state percentage increases, other merit increases, county contributions to salary or the county variances themselves. The district court properly rejected the regression analysis as proof of discrimination because the court understood there existed other relevant factors which had an impact on salaries. The panel majority stated:

> "The district court refused to accept the plaintiff's expert testimony as proof of discrimination by a preponderance of the evidence because the plaintiff's expert had not included a number of variable factors the court considered relevant, among them being the across the board and percentage pay increases which varied from county to county. It defies logic to compare the salary of an agent in a county which has granted many or large increases or pays high salaries with one in a county which has granted few or small increases or pays lower salaries . . . .
>
> Most of plaintiffs' salary case is built upon the multiple regression analysis of their expert and we think that the district court was not required to accept that testimony as proof by a preponderance of the evidence . . . . (387a-388a)

The facts clearly prove that each NCAES professional employee in 100 different counties is subject to different factors that impact on his or her salary level and have nothing to do with race.

NCAES produced countervailing and convincing evidence to show petitioners' statistical case as inaccurate and insufficient. *Teamsters, supra,* permits this to be done by substantive evidence not simply by counter statistics. The panel opinion is not in conflict with *Teamsters* or the other decisions cited by petitioners.

II. THE COUNTY EXTENSION CHAIRMEN CLAIMS WERE CORRECTLY DECIDED AND THE DECISION DOES NOT EXTEND *GENERAL BUILDING CONTRACTORS v. PENNSYLVANIA*, 458 U.S. 375 (1982) NOR VIOLATE *ARIZONA GOVERNING COMMITTEE v. NORRIS*, 77 L.Ed. 2d 1236 (1983)

Petitioners assert that the district court and Panel decision was incorrect in connection with the claims surrounding the position of County Extension Chairman. This part of the decision was not dissented from by Judge Phillips. At the outset, it should be noted that the petitioners attack the decision on a narrow ground asserting that the panel failed to recognize the NCAES responsibility and liability for final selection of county extension chairmen. That is not the case at all.

Petitioners assert that the decision extends the holding in *General Building Contractors* to Title VII,

> "despite the fact that Title VII, unlike section 1981, contains no such intent requirement." (Pet. p. 50)

This assertion is simply incorrect. Title VII disparate treatment cases require proof of discriminatory intent on the part of the employer. *Teamsters, supra, McDonnell-Douglas, supra, Pullman Standard v. Swint, supra.*

The Petitioners had to prove intentional discrimination in connection with the county extension chairmanship claims. This they failed to do. The district court analyzed the individual claims of those plaintiffs who believed they had been discriminated against in connection with selection for county extension chairman. The district court utilized the allocation of proof set out in *Texas Department of Community Affairs v. Burdine*, a Title VII disparate treatment case, in analyzing every individual claim for intentional discrimination. (222a-227a) In its analysis of each claim, the district court found no intentional discrimination. This further buttresses the determination that there was no pattern or practice of discrimination, as both claims require intentional discrimination. *Teamsters, supra.* (203a-345a)

Nor is this case similar to *Norris*. NCAES did not delegate its employment decisions to the Board of County Commissioners. The record is completely clear that *both* NCAES and the County Commissioners employ the county level employees, including CEC. (23a-24a)

It is the responsibility of NCAES to recommend qualified CEC candidates. The Board may either accept or reject the recommendations of NCAES. This is not delegation of authority. (23a-24a).

Second, the plaintiffs and the United States to utilize "discrimination" to describe the hiring decisions made in connection with the County Extension Chairman. They overlook the fact that the district court examined each individual CEC applicant's claim and found no discrimination in any of the decisions. (227a-319a) Petitioners' assertions that "the record in this case made clear that county officials invariably exercised any such delegated authority in a racial manner" are specious and without merit.

Third, the petitioners purported statistical case involving county chairman was analyzed by the district court and panel and found to be inadequate to support a finding of discrimination. The district court stated:

> "Plaintiff's statistics are flawed in a further respect in that they include the assumption that every black full agent at the county level was qualified to fill the position of county chairman. There was an utter lack of any proof to substantiate such a claim, and the persistent efforts of defendants through discovery and all the way through trial to require plaintiffs to identify the qualified labor pool from which this position should be filled met with no success. While it is true that most vacancies have been filled from within the ranks of county professionals, it is equally true that the position of county chairman requires special administrative leadership skills not shared generally by all employees." (87a-89a)

The fourth point is that despite the different analysis of the statistical evidence of comparing applications and

recommendations, by the panel and the district court, such analysis did not probe any deeper than race, application and recommendation. The analysis was insufficient to give rise to a prima facie case and considering all of the evidence presented, was found to be unpersuasive. (100a) The panel stated:

> "If we assume that a prima facie case was made by the naked statistics consisting of vacancies and successful applicant from 1968 through 1981, it has been completely refuted by consideration of all of the applications and even if the burden was upon the Extension Service to prove that its employment decisions were free from racial discrimination it has done so." (423a)

Petitioners and the United States were permitted at trial to put on rebuttal evidence to refute or show pretext in any explanations provided by the defense. This they failed to do.

III. THE DECISION OF THE COURT OF APPEALS IS NOT IN CONFLICT WITH *GREEN v. SCHOOL BOARD OF NEW KENT COUNTY*, 391 U.S. 430 (1968)

NCAES, as do all other Extension Services, sponsors two voluntary participation community programs, 4-H and Extension Homemaker Clubs. Petitioners assert that the district court and panel majority incorrectly denied petitioners' claims with respect to an alleged affirmative duty on the part of NCAES to force integrated membership in local Extension Homemaker Clubs and 4-H Clubs existing in racially mixed communities. Petitioners compare this to is a school case and utilize the catch phrase of "freedom of choice" plan to fit these voluntary programs into *Green v. School Board of New Kent County*, *supra*, and to divert attention from the facts. It is significant that the United States pursued this claim at trial but did not appeal this issue. Here is what the record shows.

Extension Homemaker Clubs

Extension Homemaker Clubs are voluntary, volunteer groups formed in communities by adults and receive home economic and other advice and support from NCAES. It has been the policy that all extension homemaker clubs are to be organized without regard to race and for each club to certify that its membership will be open to all persons without regard to race. NCAES home economics agents are instructed to encourage the formation of new clubs within their respective communities without regard to race. Announcements of club formation and this policy are published in the media. Despite this, clubs of one race exist and so do many clubs of both races. (165a)

There has been no evidence presented that since the adoption of this policy for extension homemaker clubs that *one* single black or white person has sought and been denied membership on the basis of race in an extension homemaker club in North Carolina. (166a-172a)

NCAES has created an integrated environment and the district court found:

> "the evidence shows, and plaintiffs do not question that for all phases of club activity above the community club level, all extension staff and volunteer leaders, all county wide, district and state meeting and training sessions are fully integrated." (168a-169a; FN 53)

4-H and Youth Program. The 4-H and Youth Program conducted by NCAES is designed to develop good citizenship, character and to teach youth useful and practical skills. North Carolina ranks 7th in the United States in terms of black youth participation in 4-H. (Tr. 5107). 4-H is a voluntary program not a mandatory public school system. It is significant that in 1972 black youth participation in 4-H programs was 22,174. From 1972 to 1980 participation by black youth rose to 30,243. while black volunteer leadership increased from 2,665 in 1972 to 4,022 in 1980. (DX 227) Membership

in 4-H is not static. It is open to youth 9 to 19 and membership is constantly changing. About 1/3 of the units are reorganized each year and consequently, the clubs are not static. A 9 year old in 1965 would be in his or her early 20's now. (Tr. 5107) Out of the 30,243 black youths and 4,022 black volunteer leaders who voluntarily participated in 4-H in 1980, or any other of the thousands of persons, black or white, who participated in 4-H from 1965 to time of trial, none came forward to testify that he or she had been discriminated against in connection with the 4-H program.

Except for the one incident in Wake County involving a 4-H youth and volunteer leader, there has been no evidence presented of any person, black or white, being excluded from, denied participation in or subjected to discrimination with respect to participation in the community club 4-H program in North Carolina. (167a) The evidence presented in this case is that NCAES's 4-H and youth program is completely integrated in all activities beyond the community 4-H club level and has been for many years. (168a-169a).

The 4-H program has grown to 34,000 black participants in 1980 and black participation in 4-H has risen and not declined. This is conclusive proof that blacks participating in the 4-H programs in North Carolina do not consider their membership in the 4-H clubs "a badge of slavery" as petitioners previously argued.

Petitioners assert that NCAES failed to follow administrative "affirmative action" regulations of the U.S.D.A. interpreting Title VI. At trial Petitioners took the position that affirmative action required all clubs of one race in a mixed community to merge with clubs of another race and if not the Extension Service would be required to withdraw services and support. In short, to shut off the program. (166a-167a)

The district court found that the 4-H and extension homemaker programs met the requirements of Title VI

and were operated without discriminatory intent or purpose. (170a-183a).

The district court also recognized that this was not the same situation as "freedom of choice" school cases such as *Green* and that this is not a "freedom of choice" case. (174a) Petitioners' assertions to the contrary should be disregarded.

The fact that not one black parent, leader or child came forward to testify that he or she had ever been denied membership, subjected to unfair or unequal treatment or subjected to racial discrimination in the 4-H program in North Carolina is overwhelming proof that NCAES has taken affirmative action with respect to 4-H in North Carolina. The district court and panel majority's decisions are correct.

IV. THE DECISION OF THE COURT OF APPEALS IS NOT IN CONFLICT WITH *EISEN v. CARLISLE & JACQUELIN*, 417 U.S. 156 (1974)

Petitioners' contend that the decision of the court of appeals is in conflict with *Eisen v. Carlisle & Jacquelin*, *supra*. Petitioners assert that this Court, in *Eisen* determined that the propriety of a class action does not rest on whether or not the plaintiff will prevail but rather whether or not the requirements of Rule 23 are met and that the district court and court of appeals failed to follow that directive in this case. *Eisen* involved two issues. The first was whether or not the determination of a class certification and requirements that defendants pay a part of the statutory notice requirement were appealable as a "final order" under 28 U.S.C. 1291 and the second was whether the district court's order directing the defendants to pay part of the cost of notice after a preliminary hearing on the merits was in violation of Rule 23. This Court held that the orders were appealable within 28 U.S.C. § 1291 and that the order requiring the defendant to pay the cost of notice after preliminary inquiry into the merits was error. *Eisen, supra*, 178.

It is important to note that class action certification was denied by the district court in 1979, following completion of discovery and that both petitioners and the United States had filed motions for class certification. The case proceeded as a pattern or practice action on behalf of the same persons seeking to be certified as a class and seeking the same relief. The district court properly determined the class issues by following the requirements of Rule 23. (33a-49a)

The petitioners continue to press issue of the denial by the district court of class certification for 3 purported classes: (1) All black employees of NCAES on or about November 18, 1971; (2) All black members and potential members of NCAES 4-H and Extension Homemaker Clubs on or after November 18, 1971; and (3) A defendant class of all county commissioners within the State of North Carolina on or after November 18, 1971. It is hard to imagine why this issue continues to be brought forward in view of the fact that this action was tried in common cause and on a theory of pattern or practice on all issues. The petitioners' Post Trial Submittal of Proposed Findings of Fact and Conclusions of Law, incorporated the suggested relief contained in the United States Post Trial Submittals. The relief consisted of a proposed decree and order granting all the relief plaintiffs wanted if they won. (Plaintiffs Memorandum and Proposed Conclusions of Law and Fact filed February 8, 1982)

NCAES respectfully directs the Court's attention to the district court's decision and the salary claim discussions contained in this Response for a statement of the facts as to why the employee class was correctly not certified. NCAES professional county personnel are not situated in like employment situations "across the board" be they black or white. Each county agent within NCAES is employed to fill a vacancy within a particular county and to fill the special requirements and need of that county. Each county's contribution in salary percentage

and salary offered differ from other counties. The claims of one plaintiff against a county for salary will not be typical with those of another. Likewise, the actions of each of the 100 Boards of County Commissioners with respect to hiring, selection of county chairmen and salary are autonomous within themselves. In short, the black plaintiffs are scattered over the state, each holding different jobs and performing different responsibilities within particular counties within 30 or so of the 100 separate counties. In no sense are they workers within the same facility or do they have commonality with blacks employed in other counties. The only commonality is race and that factor, is insufficient for class certification. *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147 (1982).

Likewise, the decision to deny class certification to the alleged class of County Commissioners is correct. Each of the 100 Boards of County Commissioners is autonomous. Each makes decisions only with respect to NCAES employees which it agrees to employ. Black professionals are not employed in all 100 counties. The actions of one Board of Commissioners are not binding on another. Class certification for the Boards of County Commissioners within North Carolina's 100 counties was appropriately denied. *See Paxman v. Campbell*, 612 F.2d 848 (en banc) (4th Cir. 1980) holding class certification of 130 Virginia school boards inappropriate. There was no evidence of intentional discrimination or a statewide course of action by any or all of 100 Boards of County Commissioners with respect to the petitioners. Each Board maintained complete autonomy over its employment decisions. Class certification was properly denied.

The district court did not refuse to certify classes by virtue of conducting a preliminary inquiry on the merits as prohibited by *Eisen*. Petitioners try to distort the district court's refusal to certify a class of black 4-H and Extension Homemakers so as to make it appear the district court refused upon some preliminary showing on

the merits rather than by applying the test of Rule 23. Nothing could be farther from the facts. The district court refused to certify the class before trial and again after trial on the merits. The panel majority stated:

> "The court found that there was no evidence whatever that any other black child was ever denied membership in a 4-H Club or denied 4-H Club services, or provided inferior services by the Extension Service. It thus denied certification of the class. *The plaintiffs do not take exception either to the findings of fact of the district court or to its conclusion that the class should not have been certified on the basis relied upon by that court.*" 370a-371a (emphasis added).

Suffice it to say that Petitioners failed to produce a single alleged class member to testify. Since there was no evidence of discrimination in the first instance, class certification was appropriately denied as no class ever existed.

The United States and petitioners tried this case hand in glove and proceeded in common cause. The relief sought by pattern or practice claims was as broad as any class claims and permissible without regard to the requirements of meeting Rule 23. The pattern or practice claims provided the individual plaintiffs and prospective class members with an avenue of relief without regard to Rule 23. *General Telephone Company v. EEOC, supra*, provides that pattern or practice relief would be the same as if class certification occurred. *Cooper v. Federal Reserve Bank of Richmond*, held that the elements of a prima facie pattern or practice case are the same in a private class action. Petitioners have yet to point out a single prejudice or disadvantage to them at trial by not receiving class certification. Had they won they would have been entitled to the same relief.

It is clear that Rule 23 was properly applied and *Eisen* was not disregarded by either court. 365a-378a.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted, this 16th day of August, 1985.

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APPENDIX

EXHIBIT A

VARIATIONS IN SALARIES OF COUNTY EXTENSION AGENTS BETWEEN JULY 1, 1979 AND JULY 1, 1980

	Source and Amount of Salary 7/1/79				Source and Amount of Salary 7/1/80		
Name of Agent	County	State	County	Total	State	County	Total
Pam Bagwell	Macon	8,237	3,763	12,000	9,061	3,993	13,059
Wallace Stephens	Bladen	6,000	6,000	12,000	6,600	6,480	13,080
Fletcher Barber, Jr.	Chatham	7,788	4,212	12,000	9,767	4,507	14,274
Bobby Edwards	Alleghany	8,600	3,900	12,500	10,060	4,095	14,155
Anne Edge	Hyde	9,651	2,892	12,543	12,116	3,448	15,564
Gerda DeJong	Washington	9,863	2,764	12,627	11,549	2,985	14,534
Sylvia Siler	Beaufort	8,593	4,044	12,637	10,352	4,452	14,804
Doug Lee	Davie	8,557	4,120	12,677	10,213	4,500	14,713
Jessica Tice	Currituck	9,569	3,180	12,749	11,826	3,502	15,329
Lee Matthews	Bladen	8,830	4,070	12,900	10,213	4,396	14,609
David Goff	Cabarrus	7,412	5,998	13,410	9,053	6,469	15,552
Theresa Ford	Chowan	9,189	4,485	13,674	11,558	4,889	16,447
John Deweese	Hyde	10,369	3,425	13,794	13,146	3,728	16,874
Robert Lopp	Davidson	7,335	7,116	14,451	8,969	8,316	17,285
James Williams	Caswell	9,978	4,522	14,500	11,476	4,894	16,360
Wanda Wilkins	Greene	9,591	4,988	14,579	11,150	5,680	16,830
Connie Greene	Avery	10,519	4,376	14,895	12,711	4,814	17,525
Jerry Simpson	Cabarrus	8,291	6,709	15,000	9,120	7,380	16,500
Jerry Washington	Alleghany	11,761	3,314	15,075	14,077	3,480	17,557
Pat Sheppard	Pasquotank	11,004	4,215	15,219	12,104	4,635	16,739
Ronnie Thompson	Davie	10,413	5,100	15,513	13,015	5,640	18,655
Nancy Hartman	Davie	10,551	5,061	15,612	12,606	5,520	18,126
Lynn Qualls	Randolph	9,363	6,343	15,706	11,690	6,827	18,517
Rebecca Beets	Watauga	10,848	5,152	16,000	13,133	5,736	18,869
William Ruark	Forsyth	8,000	8,070	16,070	8,800	8,881	17,681
Robert Breland	Ashe	13,522	2,736	16,258	15,274	2,964	18,238
Jo Ann Falls	Forsyth	9,240	7,030	16,270	10,764	8,881	19,645
George Koonce	Warren	12,098	4,368	16,466	14,308	4,718	19,026
Sandra Brown	McDowell	9,722	6,770	16,492	11,094	7,312	18,406
Franklin Shaw	Onslow	10,573	5,927	16,500	12,030	6,372	18,402
Ostine West	Davie	11,468	5,522	16,990	13,615	6,024	19,639
R.D. Hodges	Henderson	11,519	6,552	18,071	12,671	7,076	19,747
Jean Rawls	Bladen	11,809	6,297	18,106	12,500	8,787	21,287
Earline Walker	Wake	9,572	8,544	18,116	11,329	10,818	22,141
Earline Waddell	Richmond	13,061	5,112	18,173	15,607	5,623	21,230
Nancy Lilly	Onslow	11,657	6,534	18,191	13,623	7,020	20,643
Jean Hubbard	Moore	10,429	7,827	18,256	12,472	8,375	20,847
William Fowler	Wilkes	11,125	7,284	18,409	12,678	8,280	20,958
Pam Outen	Cabarrus	10,193	8,250	18,443	11,912	9,075	20,987
Virginia Credle	Beaufort	13,381	5,076	18,457	15,919	5,580	21,499
Rebecca Gaddy	Stanley	11,104	7,690	18,794	13,214	8,267	21,481
Ken Patterson	Alexander	11,971	6,864	18,835	13,868	7,344	21,212
Doris Rogers	Cabarrus	10,914	8,832	19,746	13,005	9,165	22,170
Tommy Glover	Sampson	12,881	7,008	19,889	16,009	7,536	23,545
C.D. Bunn	Swain	13,672	6,367	20,039	15,040	6,367	21,407
Doug Young	Randolph	12,348	7,741	20,089	14,183	8,515	22,698
Jane Ross	Bladen	14,556	5,603	20,159	16,876	7,009	23,885
Sara Casper	Wake	10,890	9,324	20,214	13,179	11,376	24,555
Robert Swain	Duplin	13,476	6,846	20,322	15,524	7,325	22,849
Ozetta Guye	Alamance	11,804	8,725	20,529	14,284	9,597	23,881
Dorothy Greene	Guilford	11,923	8,784	20,707	13,815	9,624	23,439
Sam Tuten	Forsyth	9,618	11,295	20,913	11,180	12,417	23,597
Carol Baker	Union	13,516	7,826	21,342	15,868	9,048	24,916
Phil Bazemore	Union	13,857	7,748	21,605	16,243	8,580	24,823
John Waddell	Surry	11,519	9,808	21,327	13,911	10,655	24,566
Eugenia Ware	Rutherford	12,683	9,296	21,979	15,766	9,761	24,812
F.G. Johnson	Pasquotank	16,052	6,146	22,198	18,857	6,760	25,617

Source of Data: U.S. Exh. #58